

Protection of Indian non-agricultural geographical indications in the European Union

Maurizio Crupi – ESR 4

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PDOS And PGIS: A Pragmatic Approach To The Link To Origin



Maurizio Crupi

Project: ESR4

Research Question

The thesis consists of four chapters built around the notion of link to origin for EU and non-EU products. Every chapter attempts to provide an answer to the following main research question: “Are the differences between PDOs and PGIs reflected in the EU Register?”, the analysis is complemented by the following sub-questions:

1. Are the different legal requirements for the registration of PDOs and PGIs able to reflect their link to origin?
2. What is the difference between PDOs and PGIs concerning the amendment of product specifications?
3. What is the role of PDOs and PGIs in the negotiations of bilateral agreement and in the registration of foreign GIs in the EU?

Methodology

The first chapter explores the nature of the link to origin and the role of natural, human, and reputational factors through a qualitative content analysis of the single documents for EU agricultural products and foodstuffs listed in the EU Register. The results of the empirical analysis are complemented by interviews to producer groups that explore why applicants have opted for a given quality scheme.

The second chapter deals with the relationship among GIs, culture, and innovation. The aim is to prove how traditional products changed during their history, advocating in favour of a dynamic notion of tradition as opposed to a static one. The role of the EU quality schemes is studied through an empirical analysis of the amendments for processed meat products concerning, in particular, the geographical area, raw materials and the method of production.

The third chapter considers the role of PDOs and PGIs in the registration of GIs from third countries. Emphasis is put on the creation of GI lists and on the product-by-product approach that results in the exclusion of some GIs from the negotiations. The chapter explores the reason for the limited number of foreign GIs entered in the EU Register by way of a direct application, made by the applicant or through the competent authority of the third country.

Societal impact

After having explored the link to origin and its change, the fourth chapter provides policy recommendations on how to keep a clear difference between PDOs and PGIs. In particular, recommendations are built on three main objectives: a need for simpler and clearer information on the link to origin, addressing the problem of the blurred difference between PDOs and PGIs; the preservation of a strong link to origin potentially hampered by the amendment of the single documents (alias innovation); and the promotion of international trade.

PROTECTION OF INDIAN NON-AGRICULTURAL GEOGRAPHICAL INDICATIONS IN THE EUROPEAN UNION

Maurizio Crupi¹

Abstract:

This paper analyses the legal tools available for the protection of foreign non-agricultural geographical indications in the European Union. The Indian focus is due to the relevance of these products in the European market and the different systems of protection granted by India and the European Union to non-agricultural geographical indications.

Among the possible solutions to this problem, it is explored the accession of the European Union to the Geneva Act of the Lisbon Agreement. The current framework is characterised by the absence of a unitary *sui generis* system for non-agricultural products in the European Union and by the lack of progress in the negotiation of a bilateral agreement with India. This situation requires an analysis of the possible alternatives available to Indian producers, with a particular emphasis on the solution offered by trade mark law.

Index:

1. Introduction. – 2. Relevance of Indian non-agricultural GIs. – 2.1. Legal definition of Indian non-agricultural GIs. – 2.2. EU *sui generis* GI protection. – 2.3. Indian non-agricultural GIs: a factual categorization. – 3. Indian non-agricultural GIs in the international framework. – 3.1. GI definition under multilateral treaties. – 3.2. Protection through bilateral agreements. – 3.3. Bilateral agreements with member states of the EU – 4. Fragmented protection of Indian non-agricultural GIs in the EU. – 4.1. EU access to the Geneva Act of the Lisbon Agreement. – 4.2. Adoption of an EU unitary system for non-agricultural GIs. – 4.3. *Sui generis* GI laws. – 4.4. Trade mark protection. – 4.5. Other forms of protection: brief overview. – 5. Conclusion. – 6. Bibliography.

Keywords:

Geographical Indications, Trade Marks, Handicrafts, Geneva Act, India-EU Bilateral Agreement.

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1. INTRODUCTION

Geographical indications (hereinafter GIs) are signs used to safeguard the link between a product and its place of origin. While the strength of said link varies according to the different international treaties considered, the definition of what products can constitute a GI remains the same.

All international treaties on GIs adopt a broad definition encompassing all categories of products, both agricultural and non-agricultural. By contrast, the *sui generis* GI system adopted by the European Union (hereinafter EU) is category-based. In particular, its *sui generis* GI system is limited only to certain products, namely wines, aromatized wines, spirit drinks, agricultural products and foodstuff; notably, it excludes non-agricultural products.

The EU currently lacks a unitary GI system that protects non-agricultural products, and there is also a lack of progress in negotiating a bilateral agreement with India, a country with a long handicraft tradition. This situation requires an analysis of the possible alternatives available to Indian producers that could protect their non-agricultural products in the EU, with a particular emphasis on the solution offered by trade mark law. This focus is due to the spread of Indian products in the EU market and to the different systems of protection granted by India and the EU to non-agricultural GIs that could hamper international negotiations and trade.

The paper considers the main legal issues regarding the protection of Indian non-agricultural GIs in the EU, according to the following structure. Firstly, it provides a factual and legal definition of Indian non-agricultural GIs. Secondly, it provides an overview of how Indian non-agricultural products are protected at the international level. Thirdly, it focuses on the protection of Indian products at the EU level. The paper concludes by considering the progress made at the EU level in adopting a unitary *sui generis* system for non-agricultural products. The perspective is limited to the current protection of non-agricultural products within the EU-Indian scenario and the accession of the EU to the Geneva Act of the Lisbon Agreement.

2. RELEVANCE OF INDIAN NON-AGRICULTURAL GIS

Statistics on international trade show that Indian products are becoming increasingly relevant to the EU market. Between 2006 and 2016, the value of Indian goods exported to the EU increased by 74%², making India its 9th trading partners³. This situation makes protecting Indian products exchanged within the EU market a crucial policy issue when negotiating a bilateral agreement between India and the EU.

By breaking up the India-EU trade flow into groups of products, it is possible to verify that manufactured products represent the majority of the Indian products sold in the EU market. In particular, textiles and clothing amount to 20% of the overall Indian products imported⁴. This highlights the importance of non-agricultural goods when it comes to the India-EU trade relationship.

As explained in Section 2.3 below, the notion of non-agricultural products includes a variety of goods that have different degrees of connection with the area of production. Currently, neither Indian and EU laws nor international treaties provide a legal definition of the concept of non-agricultural GIs.

² Eurostat, 'Development of international trade in goods. EU 28, 2006-2017'. Available at http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods (last accessed 15 June 2020).

³ European Commission, Directorate General for Trade, 'Client and Supplier Countries of the EU28 in Merchandise Trade', 2016. Available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.02.2017.pdf (last accessed 15 June 2020).

⁴ European Commission, Directorate General for Trade, 'European Union, trade in goods with India', 2018. Available at http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113390.pdf (last accessed 15 June 2020).

2.1. INDIAN LEGAL DEFINITION OF NON-AGRICULTURAL GIS

According to the Indian GI Act⁵, the difference between agricultural and non-agricultural products is not relevant to obtaining a GI in India. Under Article 2 (1), which defines the concepts used in the Act, there is no difference between agricultural, natural or manufactured goods.

Indian law defines GIs as follows:

*“geographical indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”*⁶

This means that to be entered into the Indian GI registry, the law does not differentiate about the nature of the product, once the necessary link with the territory has been established. The definition of the link and other criteria of authenticity is a complex procedure. In this sense, the system must be quite flexible, considering producers’ perspectives. Climate change, compliance with safety regulations, and changes in consumers’ needs, *inter alia*, have to be taken into account and may require a change in the product specifications. Furthermore, the system must be dynamic since if the definition of the product’s characteristics were too rigid, it would prevent producers from competing on the market through the quality and innovation of their products⁷.

Even though India does not provide different protection when it comes to agricultural and non-agricultural products, defining the boundaries of the category of non-agricultural GIs is particularly important for other countries that do adopt a sector-specific approach to the matter, such as the EU. This definition is important to distinguish between products that fall within the scope of protection and those that fall outside.

2.2. EU SUI GENERIS GI PROTECTION

When it comes to how GIs are protected in the EU, the system provides a twofold link to origin: protected denomination of origin (hereinafter PDO) and protected geographical indications (hereinafter PGI)⁸. On the one hand, PDOs provide for a stronger link with the territory. The quality or characteristics of the products are essentially or exclusively due to a particular geographical

⁵ The Geographical Indications of Goods (Registration and Protection) Act, 1999 No.48 of 1999 (30th December, 1999). Available at http://www.wipo.int/wipolex/en/text.jsp?file_id=128105 (last accessed 15 June 2020). For a more detailed analysis of the Indian GI Act please consider Soumya Vinayan, ‘Geographical Indications in India: issues and challenges - an overview’ (2017) 20 The Journal of World Intellectual Property 119.

⁶ Article 2 (1) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 No. 48 of 1999.

⁷ Amit Basole, ‘Authenticity, Innovation and the Geographical Indication in an Artisanal Industry: The Case of the Banarasi Sari’ (2014) 2014-09 Department of Economics University of Massachusetts Boston Working Paper 27. In case of innovations that are not common within the community of producers (such as the introduction of a power loom in the production of the Saree opposed to the traditional hand loom) the Author suggests a twofold protection. A dual GI system incorporating both hand and power locally produced saris, combined with a certification mark that distinguishes between the two.

⁸ See the definitions pursuant to Article 5 of Regulation (EU) 1151/2012 of the European Parliament and the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs on the protection of Geographical Indications and Designations of Origin for agricultural products and foodstuffs [2012] OJ L343/1. For ease of reference, the paper will always refer to the Regulation (EU) 1151/2012, unless otherwise specified.

environment with its inherent natural and human factors. Besides, all the production steps have to take place in the defined geographical area. On the other hand, PGIs provide for a weaker link with the territory. They protect products whose quality, reputation or other characteristics are essentially attributable to their geographical origin. In PGIs, at least one of the production steps has to take place within the geographical area.

PDOs and PGIs refer to the origin of a product, without making any further specification on the nature of the product itself. These provisions have to be read in combination with Article 2 (1) of the EU Regulation No 1151/2012 on agricultural products and foodstuffs. This Article limits the scope of protection of PDOs and PGIs to agricultural products intended for human consumption, as listed in Annex I of said Regulation and to the agricultural products listed in Annex I of the Treaty of the Functioning of the EU⁹.

Interestingly, the meaning of “human consumption” goes beyond its strict literal meaning. In this sense, products listed in Annex I of the EU Regulation are not just edible products, but also, *inter alia*, cotton and wool¹⁰. The European Commission can amend such a list through delegated acts pursuant to Article 56 of the Regulation, but any amendments have to fit within the broad category of agricultural products or foodstuffs. Besides, Recital (17) limits the scope of PDOs and PGIs to products that have an “intrinsic link” with their geographical origin¹¹.

For the time being, there is no legal definition of non-agricultural products in the EU. From the literal meaning of EU Regulation No 1151/2012, non-agricultural products should be interpreted as non-agricultural and non-foodstuff products. A closer inspection of the list contained in Annex I of EU Regulation No 1151/2012 suggests that the concepts of “human consumption” and “intrinsic link” should be interpreted as both manufactured and non-manufactured products. However, allowing other categories of raw materials having a certain connection with agriculture and farming, such as cotton, leather, wool and feathers.

When holders of an Indian non-agricultural GI want to obtain protection in the EU, they have to check whether their products are contained in the above-mentioned lists. Currently, products excluded from these lists are ineligible for *sui generis* GI protection in the EU.

2.3. INDIAN NON-AGRICULTURAL GIS: A FACTUAL CATEGORIZATION

The protection of non-agricultural GI products is particularly relevant for Indian producers and (by extension) for the Indian market, as shown under Section 2 of this paper. Due to India’s centuries-old handicraft tradition, several non-agricultural products qualify for GI protection. This is clearly reflected in the Indian registry¹².

⁹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2012] OJ C326/1.

¹⁰ Examples include the withdrawal of mineral waters pursuant to Council Regulation (EC) 692/2003 of 8 April 2003 amending Regulation (EEC) 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [2003] OJ L99/1. Whereas (2) and (3) consider that natural mineral waters and spring waters are not suitable for protection under Regulation No 2081/92, pursuant to Article 13, due to the use of invented names and identical names for different waters.

¹¹ The Recital considers an anomaly the inclusion of only certain types of chocolate as confectionery products. In addition, the Regulation does not currently include condiments and sauces, soups, ice cream, sorbet and products containing cocoa. When it comes to products for which there is not protection under Regulation (EU) No 1151/2012, Recital (16) expressly excludes wines, aromatized wines, spirit drinks, product of organic farming, or legislation on products coming from outermost regions, with the exceptions of wine-vinegars.

¹² Government of India, Ministry of Commerce & Industry, Office of the Controller General of Patents, Designs & Trade Marks Department of Industrial Policy & Promotion, Registration Details of Geographical Indications. Available at http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/Registered_GI.pdf (last accessed 9 May 2018).

A closer examination of this registry reveals that, to date, 301 registrations have already been granted for various GI applications in India. A diachronic and synchronic analysis of the Indian GIs allows concluding that handicrafts have been the most commonly registered GIs over time: 58% of Indian GIs are handicrafts, 28% are agricultural products, and 7% are manufactured goods (foodstuff, textiles, and natural goods represent minor percentages).

To understand the peculiarities of non-agricultural GIs, it is important to identify the different kind of non-agricultural products that are eligible to receive GI protection. The nature of said products is important when considering the link to a specific geographical area, from which they are deemed to derive specific qualities, characteristics or reputation. The Food and Agriculture Organization of the United Nations defines quality as “*a set of characteristics associated with a good that is recognised as distinct from mainstream products, in terms of composition, production methods or marketing*”¹³. This highlights the difference between GI products and commodities (or “mainstream products”) that have no specific qualities regarding their origin.

The word “*terroir*”, commonly used in literature, identifies a particular connection between the product and the land. It is used to refer to a geographical area where a community, due to interactions between physical, biological, and human factors, has been able to create a product with unique characteristics¹⁴. The limitation of the territory, where the *terroir* begins and where it ends, is a complex process, necessary to ensure coherence within the production area, which may lead to producers located outside the territory from being excluded.

The limitation of the production to a given territory is controversial for many non-agricultural GIs. Non-agricultural products, and in particular handicrafts, may be linked to their geographical origin through a range of links, such as historical factors, know-how, and practices. This link through historical and human factors is particularly complex, due to the migratory flow that may have concerned a certain geographical area over the centuries¹⁵.

The strength of the link between the product and the area of production depends on the characteristics of the product itself. An analysis of the Indian register reveals at least three different degrees of connection with the territory. These can be categorized from the strongest to the weakest, as follows:

- Natural goods: Makrana Marble¹⁶ (Registered GI No. 233). The Makrana Marble is popular in India for use in sculpture and building decor. It is mined in the town of Makrana in Rajasthan and was used in the construction of several iconic monuments such as the Taj Mahal;
- Handicrafts composed by raw materials originating from the same defined geographical area: Nizamabad Black Pottery¹⁷ (Registered GI No. 237). The Nizamabad Black Pottery is a kind of clay characterised by a shiny black surface with engraved silver patterns. After the craftsman gave

¹³ Food and Agriculture Organization of the United Nations, Quality and Origin Program: Glossary, available at <http://www.fao.org/in-action/quality-and-origin-program/tools/identification-tool/glossary/en/> (last accessed 15 June 2020).

¹⁴ Definition and role of *terroir* can be found in Irene Calboli, ‘Of markets, culture, and *terroir*: The unique economic and culture-related benefits of geographical indications of origin’ in Daniel Gervais (ed.), *International Intellectual Property. A Handbook of Contemporary Research* (Edward Elgar 2015) 433.

¹⁵ More information on the issues derived from the link through know-how and human factors are available in Delphine Marie-Vivien, ‘A Comparative Analysis of GIs for Handicrafts: The Link to Origin in Culture as Well as Nature?’ in Dev Gangjee (ed.), *Research Handbook on Intellectual Property and Geographical Indications* (Edward Elgar 2016) 316.

¹⁶ Government of India, Geographical Indications Journal No. 64, 7. Available at http://www.ipindia.nic.in/writereaddata/Portal/IPOJournal/1_70_1/gi-journal-64.pdf (last accessed 15 June 2020).

¹⁷ Government of India, Geographical Indications Journal No. 68, 8. Available at http://www.ipindia.nic.in/writereaddata/Portal/IPOJournal/1_74_1/gi-journal-68.pdf (last accessed 15 June 2020).

the desired shape to the clay mould, the product is baked in fire and then washed with vegetable matter that gives to the pottery a dark lustrous body;

- Handicrafts linked to the territory through reputation and human factors: Banaras Brocades and Sarees¹⁸ (Registered GI No. 110). The Banaras Saree made in Varanasi, is among the finest in India and widely renowned for its fine silk and opulent embroidery. Among its unique characteristics, there is a compact weaving together with metallic visual effects and very detailed figures.

The link to the origin is an objective element that must be proven by producers. In some cases, the proof of this link is easier, e.g. the mere geographical origin of raw material, whereas in others it is much more complex, such as in the case of reputed products. Merely being able to demonstrate long-standing production is not enough, so any human skills and techniques that confer on the product its distinctive features must also be proven.

In the case of natural goods, it is easier to establish the link of the product with the territory and the characteristics, which are essentially attributable to the geographical origin. In the case of Makrana Marble, its uniqueness is due to the high rate of calcium that characterises the sediment of the Makrana region of Nagaur, District of Rajasthan. Its chemical composition gives it the particular characteristics of strength, hardness, and translucency, together with a low percentage of water absorption.

With regard to the second product, the pottery is the result of the locally available clay, characterised by its very fine texture, and the know-how developed by local craftsmen over the centuries. In this sense, there is an objective link with the territory, given that the main raw material can only be sourced in that specific area of production. This second section could be further subcategorized, depending on the different roles played by the raw materials and the *terroir* as compared to the know-how and other human factors. When reading the product specifications, it seems that the uniqueness of the product is mainly derived from the way in which the sheen is obtained¹⁹, rather than the uniqueness of the local clay²⁰.

With regard to the saree, its uniqueness mainly comes from the know-how developed over the centuries by local craftsmen. The silk used, the main raw material must be of the highest quality but is not strictly linked to the territory where the saree is produced. Under Section 1J of the product specifications, it is stated that the silk can be imported from various centres within and outside the country of production, *inter alia* Karnataka, Kashmir, China and Japan, without any further detail. Therefore, the main way to link the product to the territory is by way of reputation and human

¹⁸ Application for registration of Logo for Banaras Brocades & Sarees of Uttar Pradesh. Available at http://ipindiaservices.gov.in/GI_DOC/237/237%20-%20Form%20GI-1%20-%2029-04-2011.pdf (last accessed 15 June 2020). Textiles Committee Government of India and Human Welfare Association, 'Dream of Weaving: Study and Documentation of Banaras Sarees and Brocades' 2007. Available at <http://textilescommittee.nic.in/writereaddata/files/banaras.pdf> (last accessed 15 June 2020).

¹⁹ Cf. Government of India (n.17) 8. "*This sheen is obtained by dipping it into a solution of clay and vegetable matter, dried, then rubbed with a vegetable oil, and then baked in fire. This process renders a lustrous effect to the vegetable matter*".

²⁰ Delphine Marie-Vivien observes that there are different possible solutions with regard to the link to the territory via a combination of natural and human factors. In particular, with regard to handicrafts goods, she highlights the impact played by natural factors as the source of raw materials and the role of natural factors on influencing the process. See Delphine Marie-Vivien, 'The Protection of Geographical Indications for Handicrafts: How to Apply the Concepts of Natural and Human Factors to All Products' (2013) 4 The WIPO Journal 201, 202.

factors²¹. In such cases, the threshold should be very high. Historical evidence and pre-existing know-how are required to make the link to the territory objective.

Loosening the link with the territory has led to criticisms because human factors are highly susceptible to change, i.e. by way of migratory flows. It could be argued that human factors are influenced by (at least) two aspects: natural factors and human interactions. Know-how is not simply transferred from one geographical area to another but has to adapt to a new environment. In addition, human factors are characterised by a collective dimension. Individuals outside the community are unable to reproduce the same know-how, including the changes that have influenced the specific expertise over time²². The question remains, however, as to whether a link to origin via human factors alone should be governed by the same legal regime as the rules applying to *terroir*, which involves a combination of both natural and human factors²³.

3. INDIAN NON-AGRICULTURAL GIS IN THE INTERNATIONAL FRAMEWORK

Having examined the relevance of Indian non-agricultural GIs for the Indian-European relationship and the problems of assessing the link of those products with the territory, it is necessary to examine the international protection for Indian non-agricultural GIs.

The first part of this section analyses how international treaties distinguish among different signs of origin, in particular between geographical indications and appellations of origin. The second part considers the possibility of protecting Indian non-agricultural products in the EU through bilateral agreements. The third part deals with the protection of non-agricultural products in the Member States of the EU that are contracting parties of the Lisbon Agreement.

3.1. GI DEFINITION UNDER MULTILATERAL TREATIES

International treaties differentiate signs of origin with regard to the strength of the link of the product with the territory but not with regard to the nature of the product itself. At the international level, both agricultural and non-agricultural products are entitled to receive GI protection.

The Lisbon Agreement for the Protection of Appellations of Origin and their Registration (1958) is aimed at giving wider protection to the geographical origin of a product than that granted by previous agreements²⁴. Article 2 (1) of the Lisbon Agreement limits its scope to the appellations of origin, defined as follows:

²¹ An example of the different European focus, when compared to India, is given by the GI Kashmir Pashmina and the PDO registered for Native Shetland Wool. In the first case, according to the GI Application No. 46, the link to the territory is a given know-how, weaving and locally available raw materials. Anyway, the area where cashmere comes from is not precisely demarcated. This suggests that collecting the raw material is less important when compared to spinning and weaving. On the contrary, the weaving phase is not included in the European PDO, so the fabric can be produced anywhere, according to any method. Ibid 201.

²² Ibid 202. Laurence Berard and Philippe Marchenay, *From Localized Products to Geographical Indications: Awareness and Action* (2008) 21-22. Available online at http://ethno-terroirs.cnrs.fr/IMG/pdf/Localized_Products_to_GI.pdf (last accessed 15 June 2020).

²³ With regard to the progressive detachment from the *terroir* paradigm, see Dev Gangjee, 'From Geography to History: Geographical Indications and the Reputational Link', in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 44.

²⁴ The Lisbon Agreement provides for an enhanced protection that goes far beyond misleading or false indications. Pursuant to Article 3: "protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation", or the like". This Agreement also implements a shield against genericism. In this sense, an appellation which has been granted protection in one of the Member States cannot become generic, provided it is protected in the country of origin.

“The geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors”.

This wording does not distinguish between agricultural and non-agricultural products, as soon as the product originates from a given territory and has certain qualities in reason of its geographical origin.

The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (2015), contains provisions aimed at widening the membership of the Lisbon Agreement, in turn making it more attractive to users. The Geneva Act provides a solution to the lack of progress at the WTO in the creation of a multilateral system for GIs and a higher level of protection to all GI products. In particular, Art. 28(iii) allows any intergovernmental organization to become a contracting party of the Act. The EU accession of 26 November 2019 is a cornerstone of the Act, representing not only an important step for protecting EU GIs in a multilateral forum but also an important expansion of the geographical coverage of the Act²⁵.

The Geneva Act is aimed at promoting a multilateral forum for the international protection of GIs, a simpler and more efficient mechanism compared to the current practice of bilateral agreements, with lower administrative costs and burdens²⁶. It is important to note that, for now, the Lisbon system counts only 30 contracting parties and there is a certain scepticism towards the accession of other states, in particular those that are traditionally against a *sui generis* GI system²⁷.

At present, India is not a contracting party to any of the above-mentioned treaties. Accession to the Geneva Act could give a high level of protection to Indian producers for their (agricultural and non-agricultural) products in third countries. The accession of the EU to the Geneva Act makes it possible to obtain regional titles of protection valid throughout the entire EU territory²⁸.

Unlike the Lisbon Agreement, the definition of GIs contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter TRIPS) is clearly broader than the above-mentioned concept of appellation of origin²⁹. The definition provided in Article 22 (1) TRIPS reads as follows:

“Geographical Indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

²⁵ See PR/2019/84126 November 2019 <https://www.wipo.int/pressroom/en/articles/2019/article_0015.html> accessed 15 June 2020.

²⁶ See Anna Micara, ‘The Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration: An Assessment of a Controversial Agreement’ (2016) 47 *International Review of Intellectual Property and Competition* 673.

²⁷ Despite the broader scope of protection of the Geneva Act when compared to the Lisbon Agreement, Gervais looks at the missed opportunity to reconcile the *sui generis* GI system with the common law systems. See Daniel Gervais, ‘A Look at the Geneva Act of the Lisbon Agreement: A Missed Opportunity?’ in Irene Calboli and Ng-Loy Wee Loon (eds.), *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 122.

²⁸ See below section 4.1.

²⁹ With regard to the difference between the notions of appellation of origin under the Lisbon Agreement and geographical indication under the TRIPS Agreement see Daniel Gervais, *The TRIPS Agreement. Drafting History and Analysis* (Sweet & Maxwell 1998) 122.

The TRIPS Agreement provides protection to goods that only have a reputational link with their place of origin, without requiring any specific quality or characteristic due to that origin. This makes it possible to protect handicrafts having a particular reputation³⁰ in reason of specific know-how developed over time in a certain place³¹. In the TRIPS Agreement, as in the previous treaties, there is no difference with regard to the nature of the goods³².

Both India and the EU Member States are Members of the TRIPS Agreement. It is important to note that the TRIPS Agreement gives certain flexibility when it comes to the legal means for GI protection³³. In particular, pursuant to Article 22 (2) Members have to provide the “legal means” for protecting geographical indications, without any further specification. This makes it possible to protect GIs under different systems, such as a *sui generis* system but also under trade mark law. This is a choice left to each Member State. The consequence, as considered under Section 4, is fragmentation of GI protection for non-agricultural products, which is not harmonised within the EU.

3.2. PROTECTION THROUGH BILATERAL AGREEMENTS

Within the framework of international trade and negotiations, countries conclude bilateral agreements in order to improve export, competition, and market access for their products³⁴. The India-EU trade agreement would be one of the largest agreements in terms of population covered, touching almost 1.7 billion people. The negotiations between India and the EU started in June 2007, but no agreement has yet been reached. Current negotiations are dealing with investment protection, access to respective internal markets, rules on intellectual property and competition together with sustainable development, and the protection of geographical indications³⁵.

Despite the lack of a uniform EU system for protecting non-agricultural GIs, these products are relevant when it comes to international negotiations. The current EU approach, based on product categorization, can easily be a hindrance to international trade and those negotiating bilateral agreements. This problem is especially true with those countries, such as India, which have a strong interest in protecting their non-agricultural products³⁶. The following paragraphs, it will be considered the example of the Free Trade Agreement signed between the EU and Colombia and Peru in June 2012, as a compromise solution while waiting for a new EU Regulation on this matter.

Appendix 2 of Annex XIII of the EU Agreement with Colombia and Peru lists two geographical indications for “products other than agricultural and foodstuff products, wines, spirit drinks or

³⁰ For an overview of the notion of reputation see Justin Malbon, Charles Lawson and Mark Davison, *The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. A Commentary* (Edward Elgar 2014) 334.

³¹ Daniel Gervais ‘Traditional Knowledge: Are We Closer to the Answers? The Potential Role of Geographical Indications’ (2009) 15 ILSA Journal of International & Comparative Law 551. Analyses the protectability of Swiss watches, where the reputation is mainly derived from human factors rather than the geographical origin of raw materials.

³² See Felix Addor and Alexandra Grazioli, ‘Article 22’ in Thomas Cottier and Pierre Veron (eds.), *Concise International and European IP Law TRIPS, Paris Convention, European Enforcement and Transfer of Technology* (Wolters Kluwer 2016) 66. For a comprehensive analysis of the additional protection for GIs for wines and spirits see Michael Blakeney, *The protection of geographical indications law and practice* (Edward Elgar 2014) 25.

³³ For a more comprehensive analysis of the protection of GIs under the TRIPS, *ibid* 20.

³⁴ For an overview of the shift from multilateral forum in favour of bilateral negotiations see Anke Moerland, *Why Jamaica Wants to Protect Champagne: International Property Protection in EU Bilateral Trade Agreements* (Wolf Legal Publishers 2013) 206.

³⁵ *Ibid* 317, for an overview of the negotiations of the EU-India Agreement. More information is available at European Commission, India, 2018. Available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/india/> (last accessed 15 June 2020).

³⁶ Delphine Marie-Vivien, ‘Do Geographical Indications for Handicrafts Deserve a Special Regime? Insights from Worldwide Law and Practice’ in William van Caenegem and Jen Cleary (eds.) *The importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Springer 2017) 223.

aromatized wines” for which protection is sought: Guacamayas (handicrafts) from Colombia and Chulucanas (pottery) from Peru. Interestingly, the bilateral agreement makes a distinction between agricultural and non-agricultural products, conferring a different level of protection. On the one hand, Article 207 (d)³⁷ of the bilateral agreement recognizes that the above-mentioned non-agricultural products are protected as GIs in their country of origin. On the other hand, Article 210 (1)³⁸ limits the scope of protection of the bilateral agreement to the products listed in Appendix 1 of Annex XIII, which refers only to agricultural products.

In order to break this deadlock, the first part of Article 207 (d) of the bilateral agreement states the following:

“geographical indications for products other than agricultural foodstuffs products, wines, spirit drinks or aromatised wines listed in Appendix 1 of Annex XIII (Lists of Geographical Indications) may be protected according to the laws and regulations applicable in each Party.”

Given that the current EU *sui generis* system does not extend to non-agricultural products and that the EU has to comply with TRIPS for the protection of geographical indications, the protection “according to the laws and regulations applicable in each Party” is achieved through different systems such as trade mark law and unfair competition³⁹. As a consequence, the difference between trade marks and geographical indications in the EU leads to agricultural and non-agricultural products being protected differently⁴⁰.

More recently, non-agricultural products became relevant also during the negotiations with China. As shown by Art. 1(2) bilateral agreement with China⁴¹:

“[...] The Parties agree to consider extending the scope of geographical indications covered by this Agreement after its entry into force to other product classes of geographical indications, and in particular handicrafts. For that reason, Parties have included in Annex VII names identifying products originating and protected in their territory that, upon enlargement of the scope of protection of this Agreement, will be

³⁷ The second part of Article 207 (d) of the Trade Agreement between the European Union and its member states, of the one part, and Colombia and Peru, of the other part provides the following: “Parties acknowledge that geographical indications listed under Appendix 2 of Annex XIII (Lists of Geographical Indications) [namely Guacamayas (handicrafts) and Chulucanas (pottery)] are protected as geographical indications in the country of origin [Colombia and Peru].”

³⁸ Art 210 (1) states as follows: “The geographical indications of a Party listed in the Appendix 1 of Annex XIII (Lists of Geographical Indications), as well as those added pursuant to Article 209, shall be protected by another Party at least against: [...]; without prejudice to this subparagraph, if a Party amends its legislation in order to protect geographical indications other than those identifying wines, aromatised wines and spirit drinks at a higher level than the protection provided for in this Agreement, that Party shall extend such protection to the geographical indications listed in Appendix 1 of Annex XIII (Lists of Geographical Indications); [...]”.

³⁹ This view seems to be confirmed by the answer rendered by the European Parliament to the question raised on 17 December 2017 by d’Ignazio Corrao, David Borrelli and Fabio Massimo Castaldo. ‘In the current absence of protection for non-agricultural GIs at EU level, free trade agreements concluded by the EU do not cover non-agricultural GIs. Non-agricultural GIs are protected in the EU through various targeted legal frameworks in force in the Member States.’ European Parliament, Parliamentary questions Answer given by Ms Bieńkowska on behalf of the Commission, 16 March 2018 (available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-007786&language=EN> last accessed 15 June 2020).

⁴⁰ See Bernard O’Connor and Laura Richardson, ‘The legal protection of Geographical Indications in the EU’s Bilateral Trade Agreements: moving beyond TRIPS’ (2012) 4 Rivista di diritto alimentare 19.

⁴¹ EU-China Agreement on cooperation on, and protection of, geographical indications, version published following the end of the negotiations announced on 6 November 2019 <<https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/eu-china-gi-agreement-for-publication.pdf>> accessed 15 June 2020.

given priority for protection in accordance with the procedures set out in Article 3 (Addition of geographical indications) ”.

Annex VII of the agreement with China will be published at a later stage and, so far, no reference is made to their protection as trade marks or through a *sui generis* right. Anyway, the text of the Agreement makes clear that the Parties have to review progress made in enlarging the scope of protection of the Agreement within two years after its entry into force, putting a certain political pressure on the EU to adopt a *sui generis* legislative framework for the protection of non-agricultural products.

Since the political situation may change in the near future, it is important to observe that bilateral agreements offer the possibility of amending the GI list through a Sub-Committee on Intellectual Property⁴². This allows not only the possibility for third countries to add new products, but it also means the possibility for the EU to amend the lists by including non-agricultural products. For the time being, as long as there is no EU-wide GI protection for non-agricultural products, not only third countries do not receive a *sui generis* GI protection for non-agricultural products but the European Commission does not conduct negotiations on behalf of its Member States for the protection of such products.

Having regard to India, as already mentioned, negotiations with the EU remain ongoing. Therefore, it is necessary to wait to see whether a list of Indian non-agricultural GIs will be included in any agreement with the EU.

3.3 BILATERAL AGREEMENTS WITH MEMBER STATES OF THE EU

Apart from bilateral agreements concluded between the EU and third countries, it is also necessary to consider the effects that the GI chapter of bilateral agreements signed between EU Member States and third countries have at the EU level when it comes to GIs⁴³.

When it comes to geographical indications, EU law is exhaustive in nature⁴⁴. This means that the EU GI Regulations preclude a Member State from entering into bilateral agreements with another Member States or a third country in order to achieve protection for its GIs if no application has been made pursuant to the EU Regulation. For the purpose of this section, bilateral agreements should be interpreted restrictively, meaning those agreements concluded between an EU Member State and a third country on a matter not regulated at the EU level, namely GIs for non-agricultural products.

In other words, EU Member States can grant to products originating from third countries the same protection available to agricultural products. Same provisions apply for the international agreements entered by a Member State before (or even after) its accession to the EU, but before the adoption of EU-wide protection of a given sector⁴⁵.

⁴² See for example Art. 209 of the EU-Colombia/Peru FTA.

⁴³ oriGIn, Insight Consulting, REDD, ‘Study on geographical indications protection for non-agricultural products in the internal market’, final report (2013) 92. The study analyses 86 products protected at the national level. 23 of these products enjoy protection through bilateral agreements in third countries. Among these bilateral agreements, the study identifies only one agreement concluded with non-European countries: the bilateral agreement concluded between France and Costa Rica of 1933.

⁴⁴ See 08/09/2009, C-478/07, *Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH* ECLI:EU:C:2009:521 § 121-129. See further Dev Gangjee (n 23) 4.

⁴⁵ See 18/11/2003, C-216/01, *Budějovický Budvar, národní podnik v Rudolf Ammersin* ECLI:EU:C:2003:618, § 168-172. Member States have to take the appropriate steps in order to eliminate any incompatibility between the earlier agreement and the Treaty Establishing the European Community *OJ C 340, 10/11/1997 P. 0300*. Nevertheless, Member States are allowed to apply such an agreement, respecting obligation arising under international law.

An example that could clarify the issue is the Lisbon Agreement to which seven Member States are parties, namely Bulgaria, the Czech Republic, France, Italy, Hungary, Portugal, and Slovakia⁴⁶, while the EU is excluded because only countries can accede to this Agreement. The situation changed with the adoption of the Geneva Act revising the Lisbon Agreement on 20 May 2015. As already considered, the Geneva Act is compatible with the TRIPS agreement and relevant EU law on GIs and allows intergovernmental organisations to become contracting parties.

It should be noted however that the EU has exclusive competence for the areas covered by the Geneva Act, as confirmed by a recent judgement⁴⁷, which clarified that the Geneva Act has direct and immediate effects on trade between the EU and third countries party to the Agreement. Therefore, the negotiation of the Geneva Act falls within the exclusive EU competence pursuant to Art. 3(1)(e) TFEU as it is part of the commercial aspects of intellectual property referred to in Art. 207(1) TFEU.

Given this exclusive competence, EU Member States cannot protect agricultural products that fall within the uniform and comprehensive protection systems established by the EU for wines, spirits, aromatised wines, and agricultural products and foodstuffs. In order to be able to properly exercise its exclusive competence related to the system in place for the protection of agricultural GIs, the EU had to become a contracting party of the Geneva Act. In addition to that, the Member States are also authorised to ratify or to accede to the Geneva Act in the interest of the Union. This ensures the continuity of rights resulting from the existing membership of seven EU Member States above-mentioned, within the limit of the exclusive competence of the EU, which remains responsible for ensuring the exercise of the rights and fulfilment of the obligations of the EU and the Member States under the Geneva Act.

Having regard to GIs for products not covered by the EU Regulations (non-agricultural products) an EU Member State already party to the Lisbon Agreement is authorized to maintain any existing registration in the International Register. An EU Member States may also submit further applications for registration under the conditions laid down by Article 11 Regulation 2019/1753. In particular, the EU Member State has to notify the European Commission of the draft application for registration, and the European Commission has not issued a negative opinion within two months of such notification.

This degree of oversight (*droit de regard*) granted to the European Commission is the result of a compromised solution in view of the EU's exclusive external competence. In this sense, Article 11 further clarifies that "a negative opinion may only be issued after consultation with the Member State concerned, and in the exceptional and duly justified cases where the evidence required under point (a) does not sufficiently substantiate that the requirements for registration under the Lisbon Agreement are met, or if the registration would have an adverse impact on the Union trade policy".

As a consequence, not only the European Commission should limit its intervention to 'exceptional and duly justified' circumstances but the issue of a negative opinion should be avoided and any issues resolved together with the EU Member State. Furthermore, pursuant to Art. 296 TFEU, any negative opinion should provide the reasons on which it is based and should not preclude the submission of a new application concerning the same appellation of origin, if the reasons for the negative opinion have been duly addressed or are no longer applicable⁴⁸.

⁴⁶ Three other Member States have signed, but not ratified the Lisbon Agreement, namely Greece, Spain and Romania.

⁴⁷ Judgment of the Court of Justice of 25 October 2017, *Commission v Council*, C-389/15, ECLI:EU:C:2017:798.

⁴⁸ See further Annex II, Proposal for a Regulation of the European Parliament and the Council on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications - Analysis of the final compromise text with a view to agreement 7237/19 of 15 March 2019.

Whether and when India will become contracting party of the Geneva Act, Indian non-agricultural products could be protected in the seven EU Member States that are already part of the Lisbon Agreement. This will be possible even without the adoption of an EU *sui generis* GI Regulation on non-agricultural products, provided the EU does not issue a negative opinion.

4. FRAGMENTED PROTECTION OF INDIAN NON-AGRICULTURAL GIS IN THE EU

As briefly considered above, GI protection in the EU has been limited to certain agricultural products, foodstuffs, wines, spirit drinks, and aromatized wine products. The reason why the EU *sui generis* system has been traditionally limited to these products is that it was originally built upon the French concept of Appellation of Origin⁴⁹. That system requires an objective link between the geographical origin of the products and their quality. With the judicial recognition of both *terroir* and reputation these two different approaches were fused within a common framework⁵⁰. The solution was the creation of the current twofold system: PDO and PGI.

In the meanwhile, for products not covered by the four existing Regulations⁵¹, there is no EU-wide *sui generis* GI protection available. As a result, all non-agricultural products have to rely, *inter alia*, on the *sui generis* protection at the national level (where available) and/or on the trade mark system, at the national or EU level. As part of trade negotiations, the EU tries to obtain protection in third countries for its agricultural products but, for the time being, it cannot offer an equivalent EU wide protection for non-agricultural products originating from third countries. Nonetheless, work has been done in order to achieve this goal⁵².

4.1. EU ACCESS TO THE GENEVA ACT OF THE LISBON AGREEMENT

The lack of progress at the World Trade Organization in creating of a multilateral GI system and a higher level of protection for all GI products make accession to the Geneva Act the only viable option for protecting GIs in a multilateral forum. For the time being, India and the EU cannot protect their agricultural and non-agricultural GIs under the Lisbon system and cannot protect the GIs of the contracting parties of the Lisbon Agreement, access to the Treaty is required.

After the entry into force of the Geneva Act (26 February 2020, three months after the accession of the EU) and the adoption of an EU-wide framework for the protection of non-agricultural GIs (still missing), India could obtain protection in the entire EU territory through a single set of rules with

⁴⁹ Dev Gangjee, 'GIs Beyond Wine: Time to Rethink the Link?' (2017) 48 *International Review of Intellectual Property and Competition* 129.

⁵⁰ Cf. Gangjee (n 23) 45.

⁵¹ EU GI protection is granted under 4 different regulations: Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs on the protection of Geographical Indications and Designations of Origin for agricultural products and foodstuffs [2012] OJ L343/1; Regulation (EU) 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products [2013] OJ L347/671; Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 [2019] OJ L130/1; Regulation (EU) 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products [2014] OJ L84/14. Unless otherwise specified, references are made to Regulation 1151/2012.

⁵² According to the European Commission '*EU-wide GI protection for non-agricultural goods could enhance our bilateral trade relationships with several of our important partners*'. European Commission, Green Paper on the protection of geographical indications for non-agricultural products (FAQ), memo (2014). Available at http://europa.eu/rapid/press-release_MEMO-14-486_en.htm?locale=en (last accessed 15 June 2020).

lower costs and administrative burdens. The current position of the EU is to refuse those non-agricultural GIs proposed by third contracting parties⁵³. This refusal is made possible through Article 15 of the Geneva Act that gives certain flexibility to the system⁵⁴. This flexibility allows a Member to declare, within one year of receiving the notice of registration, that it cannot ensure the protection of a registered appellation within its territory.

In particular, pursuant to Article 5 (1) (e) of the proposal, within two months from the date of publication of the name of the GI in the Official Journal of the European Union, the authorities of a Member State or of a third country may lodge an opposition when “the geographical indication registered in the International Register relates to a product in respect of which protection within the EU of geographical indications is currently not provided”.

In the future, after the adoption of a common EU framework for the protection of non-agricultural GIs, said refusal would be withdrawn by means of an implementing act, adopted in accordance with the examination procedure referred to in Art. 15(2) Regulation 2019/1753⁵⁵, and third contracting parties could obtain protection in the entire territory of the EU through a single set of rules. Nonetheless, it is possible that the EU will adopt a milder approach with regard to certain products since the Commission holds a delegated power to extend the coverage of GIs to products closely linked to agricultural products or to the rural economy in order to take into account international commitments or new production methods or material⁵⁶.

In the following section, it will be analyzed the progress made and the necessary steps to be taken in order to adopt a common EU framework for the protection of non-agricultural GIs.

4.2. ADOPTION OF AN EU UNITARY SYSTEM FOR NON-AGRICULTURAL GIS

Since 2011, the European Commission (hereinafter EC) explored the possibility of extending the scope of GI protection, granting unitary protection to non-agricultural products at the EU-level⁵⁷. The EC has been aware of the fact that EU Member States have different legal systems when it comes to

⁵³ COM(2018) 365 final Proposal for a Regulation of the European Parliament and of the Council on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications [2018] (available at <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vkqeeo8hbbze> last accessed 15 June 2020).

⁵⁴ For the time being, no list of grounds of refusal and invalidation has been established under Articles 9 and 15 of the Geneva Act. See Christophe Geiger, and others ‘Towards a flexible international framework for the protection of geographical indications’ (2010) WIPO Journal 1, 147. With regard to the grounds for refusal under the Lisbon Agreement, no agreement was reached among the member states in order to limit the refusal only to generic denominations in a given country (as proposed by Italy and France). Therefore, refusal is limited to two conditions: it has to be declared by the administrations of the receiving country and must be declared within one year from the notification. According to WIPO document LI-GT/1/2 of 10 May 2000, the refusals are most frequently grounded on the conflict with an earlier mark. See Christopher Heath, ‘Geographical Indications: International, Bilateral and Regional Agreements’, in Christopher Heath and Anselm Kamperman Sanders (eds.), *New Frontiers of Intellectual Property Law IP and Cultural Heritage – Geographical Indications - Enforcement – Overprotection* (Hart 2005) 104.

⁵⁵ Regulation (Eu) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications [2019] OJ L271/1.

⁵⁶ See in this regard the feedback to the roadmap submitted by the Organization for an International Geographical Indications Network (oriGIN) <https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-6308027/feedback/F8892_en> accessed 15 June 2020 and the answer given by Mr Breton on behalf of the European Commission to the question E-004236/2019 on 24 April 2020.

⁵⁷ For a more systematic analysis of the protection of non-agricultural GI products at the EU level see Pilar Montero Garcia-Noblejas, *Denominaciones de origen e indicaciones geográficas* (Tirant Lo Blanch 2016) 140.

non-agricultural products. The consequence of this fragmentation may have a negative impact on the internal market and on trade negotiations with third countries⁵⁸.

In 2012, the EC commissioned a study in order to collect more information on protected and potential non-agricultural GIs, in order to determine whether or not an EU unitary system of protection for non-agricultural GI products should be established. The study concludes that in the EU there are different systems with regard to the scope, effect and cost of protection. In particular, the study analyses the different forms of protection existing under unfair competition, trade marks, laws for the protection of specific products, and *sui generis* laws. The main problem is due to the fact that requirements for protection are different from one country to the other, making the system too burdensome for producers⁵⁹.

After having considered the limits of the legal instruments currently available, the EC published a Green Paper⁶⁰ aimed at asking the opinion of stakeholders on the scope of protection, substantive and procedural requirements and implementation of an EU *sui generis* system for non-agricultural products. Said Green Paper had been followed by public consultation and a public conference⁶¹. These contacts with stakeholders highlighted the need for a unitary system; the mere harmonisation of national legislations may not be sufficient to avoid divergences. In addition, stakeholders highlighted that the nature of the link between the territory and product should be carefully assessed since there is not necessarily a physical connection. Moreover, there is a certain consensus among EU producers on the need to model GIs protection for non-food products on the experience achieved for food products.

The Committee of the Regions presented an opinion⁶² on the Green Paper, where it expressed a favourable position with regard to the EC's initiative. In particular, it considered that the adoption of unified GI protection for non-agricultural products would have a positive effect on the EU's regional labour markets. Similarly, the European Economic and Social Committee provided a favourable opinion⁶³, calling for the need to achieve the same level of protection as provided to agricultural products by the TRIPS Agreement, increasing the information available to consumers.

⁵⁸ COM(2011) 287 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe [2011] 16 (available at http://ec.europa.eu/internal_market/copyright/docs/ipr_strategy/COM_2011_287_en.pdf last accessed 15 June 2020).

⁵⁹ Cf. oriGI n et al. (n 43) 73-75.

⁶⁰ COM (2014) 469 final Green Paper Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products [2014] (available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52014DC0469> last accessed 15 June 2020).

⁶¹ The 'Public consultation on the possible extension of geographical indication protection by the EU to non-agricultural products' ran from 15 July 2014 to 28 October 2014 (further information available at http://ec.europa.eu/growth/content/public-consultation-possible-extension-geographical-indication-protection-eu-non_en last accessed 15 June 2020).

The results of the public consultation were presented and discussed at the stakeholder conference 'Geographical indication protection for non-agricultural products – What do we learn from the public consultation?' that took place on 19 January 2015 (further information are available at http://ec.europa.eu/growth/content/conference-geographical-indication-protection-non-agricultural-products---what-do-we-learn-0_en last accessed 15 June 2020).

⁶² Opinion of the European Committee of the Regions – Extending geographical indication protection to non-agricultural products (2015/C 140/03) (available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.140.01.0013.01.ENG last accessed 15 June 2020).

⁶³ Opinion of the European Economic and Social Committee on the Green Paper — Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products (COM(2014) 469 final) (available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.251.01.0039.01.ENG last accessed 15 June 2020).

On 6 October 2015, the European Parliament adopted a resolution on the possible extension of protection of GIs to non-agricultural products. Said resolution⁶⁴ recommends the adoption of an EU-wide legislation on non-agricultural GIs. In particular, it considers that a uniform protection would stimulate technological and economic development by increasing the number of people employed in producing traditional products, as well as the recognition of the quality of the raw materials used together with the need for excellence at all stages of the production process. According to the European Parliament, in addition to a single system of protection, it is necessary to create a European public register for non-agricultural products⁶⁵. Said registration should take place in two stages: at both national and EU level, in order to ascertain that specific characteristics are not being interfered with and to ensure compliance with common criteria in all parts of the EU.

According to the legislative process of the EU, following the resolution of the European Parliament, the EC has now to submit a proposal on this matter⁶⁶. In its communication of 2015⁶⁷, the Commission stated that it will work on an impact assessment aimed at studying legislative and non-legislative alternatives (such as recommendations, guidelines, etc.), in order to create a common framework for the protection of non-agricultural products⁶⁸.

The main conclusion of the study is that an EU *sui generis* system for non-agricultural GIs would be beneficial for both consumers and producers. In particular, the study considers that GIs would promote cooperation and coordination among producers, they would raise the visibility of the product creating a spill-over effect in the region, and they would raise consumers' willingness to pay for the product⁶⁹.

Following the vote of the European Parliament and the publication of the economic study on the protection of non-agricultural GIs, the European Commission has to submit a proposal on this matter or, if it decides otherwise, the Commission has to adequately inform the Parliament of the reasons⁷⁰.

The adoption of an EU unitary system for non-agricultural GIs will result in a simplification of the registration process for Indian producers. In this sense, it will be possible to achieve protection in all Member States through a single application⁷¹.

4.3. SUI GENERIS GI LAWS

⁶⁴ Resolution of the European Parliament of 6 October 2015 on the possible extensions of geographical indication protection of the European Union to non-agricultural products (2015/2053(INI)) (available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0331+0+DOC+XML+V0//EN&language=EN> last accessed 15 June 2020).

⁶⁵ Ibid, paragraph 47.

⁶⁶ Art. 225 of the Consolidated Version of the Treaty on European Union [2012] OJ C326/01, states the following: '*The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.*'

⁶⁷ COM (2015) 550 final Upgrading the Single Market: more opportunities for people and business [2015] 15 (available at <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-550-EN-F1-1.PDF> last accessed 15 June 2020).

⁶⁸ Ibid, paragraph 26.

⁶⁹ Julia Rzepecka and others, *Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU* (Publications Office of the European Union 2020) 82. The study is based on a shortlist of 25 products (listed under table 2) representing various goods protected through trade marks and *sui generis* GIs.

⁷⁰ Laura Puccio and Massimo Sibona, 'EU Geographical Indications: Protection for non-agricultural products' European Parliament Members' Research Service, June 2016. Art. 225 of the Consolidated Version of the Treaty on European Union [2012] OJ C326/01.

⁷¹ For a detailed analysis of the current system of registration of foreign agricultural GIs cf. Montero Garcia-Noblejas (n 49) 201.

This section provides a brief overview of the different national legal frameworks for the protection of GIs for non-agricultural products. If Indian producers want to get protection at the national level (non-EU-wide) before the EU Member States, they have to consider the different national legislations regarding the protection of non-agricultural products. This results in different levels of legal protection across Europe, as shown by the study published in 2013⁷². This study has identified 13 different national *sui generis* laws for the protection of non-agricultural products. This proves the fragmentation of the legal framework, with a different scope, effect and cost of protection among the Member States. The following paragraphs will consider the example offered by the French system, as one of the most advanced with regard to the protection of non-agricultural GI products⁷³.

As considered above, countries which are members of the Lisbon Agreement are familiar with the concept of appellation of origin. Nonetheless, most of them have adopted a twofold approach: appellation of origin and geographical indication. For example, France has recently adopted a provision for the protection of geographical indications for industrial products and handicrafts (“*indications géographiques protégeant les produits industriels et artisanaux*”)⁷⁴ requiring a link between the product and the territory that is less stringent than the one required for the French appellation of origin or for the European protected denomination of origin. In this sense, the French geographical indications for industrial products and handicrafts follow a definition similar to the European protected geographical indications, since qualities, reputation or specific characteristics are (only) essentially attributable to the place of origin.

As regards the competent authorities and procedures, IP offices play a key role when it comes to the registration of a GI. However, procedures before national offices are not uniform and should be studied on a case by case basis, before taking any action. Furthermore, there is no consistency when it comes to who can apply and the requirements to obtain protection. On one side, some countries require compliance only with the general GI or AO definition, while on the other side, others have a very detailed list of requirements.

In France, the *Institute Nationale de la Propriété Industrielle* has been charged with the assessment of product specifications for non-agricultural GIs. In particular, the product specification has to describe the process of preparation and manufacture, including the steps of production or processing which have to take place in the geographical area as well as the elements ensuring the link between the product and the territory⁷⁵.

⁷² Cf. oriGIN et al (n 43) 30. Please consider that Croatia was not a member state of the EU at the time when the study was conducted.

⁷³ Other EU countries having adopted a *sui generis* GI law for non-agricultural products are: Belgium, Bulgaria, Czech Republic, Estonia, Germany, Hungary, Latvia, Poland, Portugal, Romania, Slovakia and Slovenia.

⁷⁴ Article L721-2 of the French IP Code, modified according to the Article 73 of the Law n. 2014-344 of 17 March 2014 on consumption together with Decree n. 2015-595 of 2 June 2015 concerning provisions on geographical indications protecting industrial products and handicrafts. With regard to the French system currently in place for the protection of non-agricultural GIs please consider Ginestet Francois, Protected Geographical Indications (PGIs) for Non-Agricultural Products - The French Experience, 14 June 2017 (available at <https://euipo.europa.eu/knowledge/course/view.php?id=2921> last accessed 15 June 2020).

⁷⁵ Article 721-7 n. 4 of the French IP Code: « *Le cahier des charges d'une indication géographique précise: la qualité, la réputation, le savoir-faire traditionnel ou les autres caractéristiques que possède le produit concerné et qui peuvent être attribués essentiellement à cette zone géographique ou à ce lieu déterminé, ainsi que les éléments établissant le lien entre le produit et la zone géographique ou le lieu déterminé associé* ».

For the time being, only a few products⁷⁶ have been assessed by the French Intellectual Property Office, but a study highlights the existence of more than one hundred possible applications⁷⁷. A closer look at the rejected applications reveals that the main issue raised by the Office was based on the insufficient link of the product with the territory⁷⁸.

Based on the above considerations, it is clear that the definitions may vary considerably. Some countries have a broader definition other a narrower one. The result of this lack of harmonization obliges stakeholders to carefully examine the procedure and the legal requirements that can be different from one Member State to another. Indeed, it is possible that a non-agricultural product protected in one Member State does not meet the requirements for achieving protection in another Member State, in this sense a product protected as an indication of source in a country might not be protectable as an appellation of origin in another country. In order to overcome this lack of harmonization, it is important to examine the different legal frameworks of the countries where protection is sought, before defining the most opportune strategy.

4.4. TRADE MARK PROTECTION

Trade mark law is an alternative for the protection of non-agricultural GI products. Trade marks provide the right holder with an exclusive right on the use of a sign. It is important to remember that a trade mark cannot be registered when it is descriptive. This main requirement of trade mark protection can prevent Indian producers from having protection for their non-agricultural GIs, which are descriptive by nature.

By way of derogation from absolute grounds for refusal, Indian associations of manufacturers and producers, having the capacity in their own name to have rights and obligations, are entitled to register signs and indications designating the geographical origin of a product through EU collective marks⁷⁹, for the entire territory of the European Union. The same derogation is not applicable to the EU certification marks, which indicate that the goods and services comply with a given standard set out in the regulations of use and controlled under the responsibility of the certification mark owner⁸⁰.

⁷⁶ According to the database of the INPI, available at <https://base-indications-geographiques.inpi.fr/fr/toutes-les-ig> (last accessed 15 June 2020), the office received ten applications. For the time being two (Savon de Marseille and Espadrille de Mauleon) have been rejected. Three GIs have been granted (Siege de Liffol, Granit de Bretagne and Porcelaine de Limoges). With regard to the other applications, the public consultation is still pending.

⁷⁷ See Daniel Fasquelle, ‘Rapport fait au nom de la Commission des Affaires Économiques sur la proposition de loi visant à mieux protéger les indications géographiques et les noms des collectivités territoriales (n° 329)’ of 28 November 2012 available at <http://www.assemblee-nationale.fr/14/rapports/r0458.asp> (last accessed 15 June 2020).

⁷⁸ On the relevance of the link with the territory and the need to carefully assess it, see Antoine Ginestet, ‘Protected Geographical Indications (PGIs) for Non-Agricultural Products – The French Experience’ 14 June 2017, available at <https://euipo.europa.eu/knowledge/course/view.php?id=2921> (last accessed 15 June 2020). In particular, in the case of “*Espadrille de Mauleon*” the product specifications were not found clear enough with regard to the description of the manufacturing process of the soles. These were defined as simple raw materials imported from Asia, while the Office was of the opinion that soles are an essential component of the shoes. With regard to the “*Marseille Soap*”. The product specifications were considered too broad, potentially including all soaps made in the whole France. As drafted the product specifications could have covered both liquid and solid soap made from vegetable but also animal grease. The Office was of the opinion that traditional Marseille soap comprises only solid soap made from vegetable fat and rejected the application.

⁷⁹ See Art. 74 of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark [2017] OJ L154/1. A collective mark is a sign that distinguishes the goods and services of the members of an association from those of other undertakings.

⁸⁰ On the essential function of the certification mark and the possibility for third parties complying with the standards to use the mark see Pilar Montero Garcia-Noblejas, ‘Évolution de la protection des signes de qualité de l’Union européenne’ (2018) 66 *Propriétés Intellectuelles* 37 and Pilar Montero García-Noblejas, ‘Marcas de garantía o de certificación (2015) 15 *La Ley mercantil*, 5.

The Regulation on the EU trade mark (hereinafter EUTM) expressly exclude the use of certification marks for the purpose of distinguishing goods or services certified in respect of their geographical origin⁸¹.

Having said that, rights conferred by a trade mark reveal some differences when compared to the Indian GI *sui generis* system. The essential function of a trade mark is to identify the goods or services covered by the trade mark as originating from a particular undertaking and thus to distinguish those goods or services from those of other undertakings⁸².

Geographical indications and EU marks (consisting of signs used to designate the geographical origin of goods) are signs which are governed by distinct legal regimes and pursue different aims. Article 4 of Regulation No 2017/1001 defines a EUTM as a sign capable of distinguishing the commercial origin of goods or services. On the other hand, pursuant to Article 5(2) of Regulation No 1151/2012, a GI is a name that identifies a product originating in a specific geographical area, whose quality, reputation or other characteristic is essentially attributable to its geographical origin, and at least one of the production steps of which take place in the defined geographical area⁸³. Despite this ontological difference, Indian producers could enter their non-agricultural products in the EU register as collective marks. An example, although for an agricultural product, is provided by the figurative collective mark “OZONE FRIENDLY PURE CEYLON TEA” registered for tea produced in Sri Lanka⁸⁴.

While the registration fees of a trade mark are not very expensive⁸⁵, enforcement costs are often important. An action for infringement of a trade mark must be filed (and paid) by the right holder. The applicant has to prove that defendant's use of a trade mark creates a likelihood of confusion for consumers about the origin of the product. This is an issue for small and medium-sized enterprises (SMEs). While trade marks enforcement relies on private actions from the right holder, several *sui*

⁸¹ See Art. 83 (1) of the Regulation (EU) 2017/1001.

⁸² With regard the difference between trademark and *sui generis* GI protection cf. Montero Garcia-Noblejas (n 57) 101 and Felix Addor and Alexandra Grazioli, ‘Geographical Indications beyond Wine and Spirits. A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement’ 5 The Journal of World Intellectual Property 865.

⁸³ See 20/09/2017, C-673/15 P to C-676/15 P, The Tea Board v. EUIPO ECLI:EU:C:2017:702. The CJEU held that there is no difference between the essential functions of collective and individual marks. The fact that the good covered may have the same geographical origin is not relevant under Article 8(1)(b) EUTMR.

In addition, consider Burkhart Goebel and Manuela Groeschl, ‘The Long Road to Resolving Conflicts Between Trademarks and Geographical Indications’ (2014) 104 The Trademark Reporter 829.

⁸⁴ See EUTM no. 010790913 registered in 15/08/2012 for products in class 30 “Tea; tea packets; tea bags”. See also the regulation governing the use of the mark “OZONE FRIENDLY PURE CEYLON TEA” that pursuant to Article 2(a) defines Ozone Friendly Pure Ceylon Tea as tea cultivated, grown or manufactured in the tea gardens and factories in the tea growing districts of Sri Lanka, as listed in Annex I of said document (available at http://www.pureceylontea.com/images/sltb_downloads_new/registration_forms/regulations_governing_the_use_of_the_certification_mark_of_ozone_friendly_pure_ceylon_tea_1.pdf last accessed 15 June 2020).

⁸⁵ Pursuant to Article 31 (2) EUTMR, the application fee for each trade mark depends on the number of classes of goods and services for which registration is sought. The basic fee for the application for an EU collective mark, pursuant to Article 74 EUTMR, amounts to 1800 EUR. More information available at <https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo> (last accessed 15 June 2020). The basic fee for the application for a national mark depends on the fees of each national office. For example the basic fee for the application of a collective mark before the Italian patent and trademark office amounts to 334 EUR. More information available at <http://www.uibm.gov.it/index.php/marchi/registrare-un-marchio-in-italia/quando-registrare-un-marchio-2> (last accessed 5 July 2018).

generis GI laws provide that public authorities can take action (at their own expenses) to protect a registered GI (*ex officio* protection)⁸⁶.

Alternatively, Indian GIs can be protected in the EU pursuant to Article 7 (1) (j) EUTM Regulation. This provision, in matter of absolute grounds for refusal, excludes from registration EU trade marks in reason of international agreements (providing for protection of designations of origin and geographical indications) to which EU Member States are party⁸⁷.

Due to the exhaustive nature of EU law when it comes to geographical indications⁸⁸, “international agreements” should be interpreted restrictively, as those agreements concluded between an EU Member State and a third country, such as India, on a matter not regulated at the EU level, namely GIs for non-agricultural products.

It is necessary to highlight that the role of this provision is that of objection to the registration of a EUTM and does not provide any positive protection to foreign geographical indications for non-agricultural products. Furthermore, it is important to point out that there is no official EU database listing the geographical indications for non-agricultural products protected under international agreements concluded by the EU Member States⁸⁹.

4.5. OTHER FORMS OF PROTECTION: BRIEF OVERVIEW

Apart from trade mark law, further options for the protection of non-agricultural GI products are, *inter alia*, decrees or laws protecting a specific product, unfair competition law, unfair commercial practices and misleading advertising. The following paragraphs will briefly consider the possible pitfalls raised by these options.

The first option is not available to Indian producers because these decrees or laws refer to a specific product, such as Bordado da Madeira (Portugal) or Harris Tweed (United Kingdom)⁹⁰. These laws are not available to non-local producers and are conceived more as product specifications rather than an intellectual property tool. Therefore, it will not be feasible for an Indian producer to obtain a decree or a law, setting the parameters for the protection of its products. This solution is mainly aimed at promoting local manufacture or the national craft industry.

⁸⁶ For a critic analysis on the pros and cons of trade mark protection when compared to GIs please consider Justin Hughes, ‘The Limited Promise of Geographical Indications for Farmers in Developing Countries’ in Irene Calboli and Ng-Loy Wee Loon (eds.) *Geographical Indications at the Crossroads of Trade, Development, and Culture* (Cambridge University Press 2017) 61.

⁸⁷ Art. 7 (1) (j) of the Regulation (EU) 2017/1001: “*The following shall not be registered: trade marks which are excluded from registration, pursuant to Union legislation or national law or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications*”.

⁸⁸ 08/09/2009, C-478/07, Budějovický Budvar, národní podnik v Rudolf Ammersin GmbH ECLI:EU:C:2009:521 par. 121-129.

⁸⁹ European Union Intellectual Property Office, Guidelines for examination of European Union trade marks, Part B examination, Section 4 Absolute grounds for refusal, Chapter 10 Geographical indications Article 7 (1) (j) EUTMR, version 1.0 of 1 October 2017, 38 (available at https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/trade_marks_practice_manual/WP_2_2017/Part-B/04-part_b_examination_section_4_absolute_grounds_for_refusal/part_B_examination_section_4_chapter_10/part_B_examination_section_4_chapter_10_tm_designations_of_origin_en.pdf last accessed 15 June 2020).

⁹⁰ See the Decreto Regulamentar Regional No. 11/86/M, published in 28 June 1986 and the Harris Tweed Act of 20 July 1993.

When it comes to unfair competition, there is no EU law as a coherent and uniform legislative system. Nonetheless, some aspects have been approximated among the member states⁹¹, which have adopted national provisions prohibiting act of unfair competition and complying with the Paris Convention and the TRIPS Agreement⁹². This includes the misleading or parasitic use of a GI. The focus of unfair competition law is put on practices aimed at obtaining a (unfair) competitive advantage by interfering with the normal functioning of the market.⁹³ An example is the use of the distinctive signs or GIs of a third party jointly with their true origin or expressions such as “model”, “like” or “type”⁹⁴. The consumer, in this case, is not confused or misled, but the infringer is taking advantage of the reputation achieved in the market by its competitor. When it comes to protection through unfair competition laws, the problem faced by Indian producers is the different legal protection existing across EU member states, which is costly and time-consuming.

The use of false and misleading GIs determines the creation of a wrong impression among consumers. As a consequence, the use of false and misleading GIs allows the adoption of rules on the protection against unfair commercial practices and misleading advertising. The EU reference standard is Directive 2005/29/EC (Unfair Commercial Practices Directive)⁹⁵, which deals with unfair business-to-consumer commercial practices. In particular, taking into account that GIs may be included in commercial communications directed to consumers, this form of advertising leads to the conclusion that unfair business-to-consumer commercial practices may cover the use of GIs in the commercial communication to consumers. An example of misleading commercial practice consists in giving a false information to consumers about the main characteristics of the products, including their geographical origin⁹⁶. False or untruthful information that are likely to deceive consumers, causing them to take a transactional decision that would not have taken otherwise.

When it comes to misleading and comparative advertising, the EU reference standard is Directive 2006/114/EC⁹⁷. In determining when an advertisement is misleading, account shall be taken on all its characteristics and on information about the characteristics of goods, including their geographical origin⁹⁸. This directive prevents the use of misleading indications as to the geographical origin of a product.

Even if unfair commercial practices and misleading advertising laws have been harmonized in the EU through the above-mentioned directives, there is no standardization of the national legislations. Furthermore, at the national level the focus is often on the protection of consumers rather than producers. The complexity of proving that an average consumer is deceived (that is not often easy to prove in a foreign system, with different cultural background), creates some pitfalls for Indian

⁹¹ In particular through the fundamental norms provided by the Treaty establishing the European Community and the judicial practice of the CJEU. For more detailed information on this aspect see Frauke Henning-Bodewig, *Unfair Competition Law: European Union and Member States* (Kluwer Law International 2006) 25.

⁹² See in particular Article 10 bis of the Paris Convention and Article 22 TRIPS on the prohibition of acts of unfair competition.

⁹³ Cf. Montero Garcia-Noblejas (n 57) 289 and 355.

⁹⁴ As an example, see Article 12 of the Spanish law on unfair competition, Ley 3/1991 of 10 January 1991, BOE-A-1991-628.

⁹⁵ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) [2005] OJ L149/22.

⁹⁶ See Article 6 (1) (b) of the Directive 2005/29/EC.

⁹⁷ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising [2006] OJ L376/21.

⁹⁸ See Article 3 (1) (a) of the Directive 2006/114/EC.

producers to use these provisions in order to defend their products. Therefore, many small producers often refrain from enforcing their claims because of the high costs of litigation.

5. CONCLUSION

For the time being, there is no harmonized EU protection of non-agricultural GI products. The national *sui generis* provisions differ significantly in terms of scope, effect and cost of protection among the Member States. As a result, products enjoy a different degree of protection depending on their country of origin, a situation that may overcomplicate protection for foreign producers.

According to this scenario, trade mark law appears to be the only viable form of protection for non-agricultural GIs for the entire EU territory. Indian producers can obtain protection for their products as EU collective marks at the conditions laid down in the EU Regulation 2017/1001. Furthermore, protection is available at the level of absolute grounds for refusal once a bilateral agreement between India and the EU or an EU Member State will be concluded. In order to make this provision more effective, it would be necessary to implement an official database listing all geographical indications contained in bilateral agreements concluded between the EU Member States and third countries⁹⁹.

In conclusion, there is a need for a change of paradigm in GIs protection. The creation of an EU GI system based on the strength of the link of the products with the territory should replace the current system based on product categorization. This would simplify the system and may facilitate the conclusion of bilateral agreements between the EU and third countries having a strong handicraft tradition. How the new system should be implemented is still a matter of debate. For the time being, a possible solution is the creation of a new EU regulation for non-agricultural GIs, modelled on the basis of EU Regulation No. 1151/2012 for agricultural products and foodstuff, including the amendment of the list of products contained in Annex I of said Regulation.

As previously considered, trade mark protection presents some limits due to the different aims pursued by GIs and trade marks in the EU. As stated by the CJEU, trade marks are aimed at distinguishing the commercial origin of a product, rather than its geographical origin¹⁰⁰. Nonetheless, pending the European Commission's proposal on the adoption of a *sui generis* form of protection for non-agricultural GIs, the trade mark system appears to be the only viable solution for Indian producers in order to protect their non-agricultural GI products in the EU market.

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⁹⁹ In this sense, it is noteworthy the ongoing project of 'Worldwide GI compilation' carried out by oriGIIn, NGO representing GI producers worldwide (available at <http://www.origin-gi.com/i-gi-origin-worldwide-gi-compilation-uk.html?p=all&listall=0&cc=p> last accessed 15 June 2020).

¹⁰⁰ Cf. CJEU (n 83) 64. When it comes to assessing the likelihood of confusion between a collective mark and an individual mark "the possibility that the public might believe that the goods and services covered by the signs at issue have the same geographical origin cannot constitute a relevant criterion for establishing their identity or similarity".

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EIPIN Innovation Society

Coordinated by Maastricht University, Faculty of Law,
Bouillonstraat 3, 6211 LH Maastricht, The Netherlands
P.O. Box 616, 6200 MD Maastricht, The Netherlands
E: info@eipin-innovationsociety.org

www.eipin-innovationsociety.org

